

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
MEMPHIS DIVISION

ISLAM CHOMLAEV,)
Plaintiff,) NO. _____
v.)
MCLANE FOODSERVICE, INC. and ZO) JUDGE _____
AUSTIN,)
Defendants.) MAGISTRATE JUDGE
)
)
) JURY DEMAND

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1332, 1441, and 1446, defendant McLane Foodservice, Inc. ("McLane" or "Defendant"), by counsel, files this Notice of Removal of this action from the Circuit Court in Shelby County, Tennessee, where it is now pending, to the United States District Court for the Western District of Tennessee based upon diversity of citizenship and an amount in controversy exceeding \$75,000. The grounds for removal are as follows.

Procedural Background

1. This action was commenced on or about August 12, 2021 by Plaintiff's filing of the Complaint in the Shelby County Circuit Court in Shelby County, Tennessee, case no. CT-3260-21 (the "Complaint"). True and accurate copies of the pleadings served upon this Defendant in this action are attached as Exhibit A.
2. The Complaint was served on this Defendant on or about October 5, 2021. The Notice of Removal is being filed within thirty (30) days after service of the Complaint in the matter; therefore, the removal is timely in accordance with 28 U.S.C. § 1446.
3. The Complaint contains allegations of negligence and negligence *per se* against defendant Zo Austin in operating the vehicle without exercising ordinary and due care, thus

leading to Plaintiff's injuries. It contains allegations of vicarious liability against this Defendant. It also contains direct claims of negligence against this Defendant for entrustment, hiring, supervision and maintenance. Plaintiff seeks damages in amount not to exceed \$750,000 in his Complaint. Accordingly, it is clear that the amount in controversy exceeds \$75,000, such that this Court has jurisdiction over the matter.

4. According to the Complaint, Plaintiff is a citizen and resident of Tipton County, Mississippi.

5. Defendant McLane Foodservice, Inc. is a foreign corporation organized under the laws of the State of Texas with its principal place of business in Texas.

6. Defendant Zo Austin is a citizen and resident of the State of Mississippi. Undersigned counsel also represents Mr. Austin in this matter, and he consents to the removal of this matter to the United States District Court for the Western District of Tennessee. He was served on or about September 25, 2021.

7. The United States District Court for the Western District of Tennessee has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 as there is complete diversity of the parties, and the amount in controversy clearly exceeds \$75,000 exclusive of interest and costs.

8. A copy of this Notice of Removal is being served via email on counsel for Plaintiff, and a Notice of Filing of Notice of Removal is being filed with the Shelby County Circuit Court in Shelby County, Tennessee, in accordance with 28 U.S.C. § 1446(d). (Copies of those notices are attached as Exhibit B.) The necessary filing fees have been paid simultaneously with the filing of the Notice of Removal.

9. Defendant demands a jury to try this case.

WHEREFORE, defendant McLane Foodservice, Inc. prays this Court consider the Notice of Removal as provided by law governing removal of cases to this Court and that this Court enter the appropriate orders to effect the removal of this case from the Shelby County Circuit Court in Memphis, Tennessee to this Court.

Respectfully submitted,

LEWIS THOMASON, P.C.

By: /s/Mary Beth White

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Attorneys for defendant McLane Foodservice, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing NOTICE OF REMOVAL has been served on the following counsel of record via email to:

Mohammed Farraj, Esq.
Morgan & Morgan – Memphis, LLC
80 Monroe Avenue, Suite 900
Memphis, TN 38103

This the 22nd day of October 2021.

/s/Mary Beth White